

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DAMON JOHNSON,

Plaintiff,

v.

McTEE, et al.,

Defendants.

Case No. 3:23-cv-00055-ART-CSD

ORDER DISMISSING AND CLOSING
CASE

Plaintiff Damon Johnson brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Warm Springs Correctional Center. (ECF No. 1-1). On February 17, 2023, this Court ordered Johnson to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before April 18, 2023. (ECF No. 3). The Court warned Johnson that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2). That deadline expired and Johnson did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to

1 dismiss an action on one of these grounds, the Court must consider: (1) the
2 public's interest in expeditious resolution of litigation; (2) the Court's need to
3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
4 favoring disposition of cases on their merits; and (5) the availability of less drastic
5 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
6 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

7 The first two factors, the public's interest in expeditiously resolving this
8 litigation and the Court's interest in managing its docket, weigh in favor of
9 dismissal of Johnson's claims. The third factor, risk of prejudice to defendants,
10 also weighs in favor of dismissal because a presumption of injury arises from the
11 occurrence of unreasonable delay in filing a pleading ordered by the court or
12 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
13 1976). The fourth factor—the public policy favoring disposition of cases on their
14 merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic
16 alternatives can be used to correct the party's failure that brought about the
17 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
18 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
19 the party has disobeyed a court order does not satisfy this factor); *accord*
20 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts "need not
21 exhaust every sanction short of dismissal before finally dismissing a case, but
22 must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779
23 F.2d 1421, 1424 (9th Cir. 1986). Because this Court cannot operate without
24 collecting reasonable fees, and litigation cannot progress without a plaintiff's
25 compliance with the Court's orders, the only alternative is to enter a second order
26 setting another deadline. But issuing a second order will only delay the inevitable
27 and further squander the Court's finite resources because there is no evidence
28 that Johnson did not receive the Court's February 17, 2023, order or needs more

1 time. Setting another deadline is not a meaningful alternative given these
2 circumstances. So the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that
5 they weigh in favor of dismissal. It is therefore ordered that this action is
6 dismissed without prejudice based on Plaintiff Damon Johnson's failure to file a
7 fully complete application to proceed *in forma pauperis* or pay the full \$402 filing
8 fee in compliance with this Court's February 17, 2023, order. The Clerk of Court
9 is directed to enter judgment accordingly and close this case. No other documents
10 may be filed in this now-closed case. If Damon Johnson wishes to pursue his
11 claims, he must file a complaint in a new case and either pay the required filing
12 fee or properly apply to proceed *in forma pauperis*.

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14 DATED THIS 8th day of May 2023.

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17 ANNE R. TRAUM
18 UNITED STATES DISTRICT JUDGE
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